

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

RICHARD ALLEN MCFADDEN

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Case No. 4:05cr78  
(Judge Schell)

## **REPORT AND RECOMMENDATION** **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 16, 2009, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Ernest Gonzalez.

On May 31, 2006, Defendant was sentenced by the Honorable Richard A. Schell to thirty-five (35) months' custody followed by three (3) years of supervised release for the offense of Possession of Stolen Mail. On January 4, 2008, Defendant completed his period of imprisonment and began service of his supervised term.

On October 6, 2008, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following mandatory conditions: (1) defendant shall not commit another federal, state, or local crime; and (2) defendant shall not unlawfully possess a controlled substance. The petition also alleged a violation of the standard condition that defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances or any paraphernalia related to any controlled substances, except as prescribed by a physician. The petition also alleges a violation of the following special condition: the defendant shall participate in a program of testing and treatment

for alcohol and drug abuse, under the guidance and direction of the probation office until such time as the defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following acts: (1) On September 5, 2008, defendant was arrested by the Henderson County Sheriff's Department for possession of a controlled substance; and (2) On June 5, 9, 18, and 26, 2008, July 1, 14, 19, and 29, 2008, and August 12, 18, and 26, 2008, defendant failed to submit a random urine specimen at the treatment center in Denton, Texas.

Prior to the Government putting on its case, Defendant entered a plea of true to all of the violations. The Court recommends that Defendant's supervised release be revoked. The Court finds the guideline range in this case is 18 to 24 months.

#### **RECOMMENDATION**

The Court recommends that the District Judge revoke Defendant's supervised release. The Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-three (23) months with no supervised release to follow. It is also recommended that this sentence should be served consecutively to any sentence of imprisonment the Defendant is currently serving. It is also recommended that Defendant be housed in the Bureau of Prisons, Seagoville Unit.

It is further recommended that the defendant pay restitution in the amount of \$7,304.81 to Lowe's, 1255 L. Loop 288, Denton, TX 76208; North Star Band (J.P. Morgan Chase), PO Box 2003, Elgin, IL 60121-2003; Household Bank, 6602 Convoy Court, San Diego, CA 92111, F&M State Bank (First United Bank & Trust), 1517 Center Place Drive, Suite 100, Denton, TX 76205; Mark's Beer Barn, 2335 W. Prairie, Denton, TX 76201; Woodforest Bank, 25231 Grogan Mill Road, The Woodland, TX 77380; Mr. Payroll, 1600 W. 7th Street, Fort Worth, TX 76102, and

University Computers, 111 East University, Suite 100, Denton, TX 76209. The restitution is due immediately, payable by cashier's check or money order, to the United States District Court and forwarded to the United States District Clerk's Office, PO Box 570, Tyler, Texas 75710.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

**SIGNED this 17th day of September, 2009.**

  
AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE